

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners **Date:** September 18, 2020

**Thru:** Bridget C. Bohac, Chief Clerk  
Toby Baker, Executive Director

**From:** Ryan Vise, Director  
External Relations Division

**Docket No.:** 2020-0820-RUL

**Subject:** Commission Approval for Proposed Rulemaking  
Chapter 328, Waste Minimization and Recycling  
Governmental Entity Recycling Rules Update  
Rule Project No. 2020-041-328-AD

### **Background and reason(s) for the rulemaking:**

The proposed rulemaking would implement Texas Health and Safety Code (THSC), §361.425 and §361.426 to exempt certain governmental entities from compliance with recycling requirements. THSC, §361.425 and §361.426 require that governmental entities establish a recycling program, create procedures for a recycling program, and give preference in purchasing to products made of recyclable materials if applicable criteria are met.

The proposed rulemaking would apply to governmental entities pertaining to purchasing preferences for products made of recycled materials. The proposed rules would also provide an exemption available to governmental entities, if compliance with the recycling program or purchasing preferences would create a hardship for the governmental entity.

### **Scope of the rulemaking:**

#### **A.) Summary of what the rulemaking would do:**

The proposed rulemaking would repeal §328.203 and §328.204; and simultaneously propose new §328.203 and §328.204 in order to restructure the rules to provide clarity to Chapter 328.

#### **B.) Scope required by federal regulations or state statutes:**

The proposed rulemaking would implement the requirements of THSC, §361.425 and §361.426.

#### **C.) Additional staff recommendations that are not required by federal rule or state statute:**

No additional staff recommendations are required.

### **Statutory authority:**

The rules are proposed under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. The rules are also proposed under THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid

Re: Docket No. 2020-0820-RUL

waste; THSC, §361.425, which provides that the commission shall adopt rules for administering governmental entity recycling programs; and THSC, §361.426, which provides that the commission shall adopt rules for administering governmental entity preferences for recycled products.

**Effect on the:**

**A.) Regulated community:**

The proposed rulemaking would clarify the opportunity for governmental entities to become exempt from implementing recycling programs, from including certain recyclable materials from their recycling program, and/or from giving preference in purchasing to products made of recycled materials

**B.) Public:**

No public impacts are anticipated.

**C.) Agency programs:**

External Relations Division would complete rulemaking. The rules would not create a group of affected governmental entities who are not already affected by statute.

**Stakeholder meetings:**

The commission did not hold any stakeholder meetings related to this rulemaking; however, a rule public hearing will be offered.

**Potential controversial concerns and legislative interest:**

There are no controversial concerns or legislative interest.

**Would this rulemaking affect any current policies or require development of new policies?**

The rulemaking would not require development of new policies.

**What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?**

The TCEQ specifically requires this rulemaking. There are no alternatives.

**Key points in the proposal rulemaking schedule:**

**Anticipated proposal date:** October 7, 2020

**Anticipated *Texas Register* publication date:** October 23, 2020

**Anticipated public hearing date:** November 17, 2020

**Anticipated public comment period:** October 23, 2020 - November 24, 2020

**Anticipated adoption date:** March 2021

**Agency contacts:**

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Commissioners  
Page 3  
September 18, 2020

Re: Docket No. 2020-0820-RUL

**Attachments:**

None

cc: Chief Clerk, 2 copies  
Executive Director's Office  
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Morgan Johnson  
Brody Burks  
Office of General Counsel  
Calen Roome  
Gwen Ricco